

## **NOTICE OF PROPOSED REGULATORY ACTION**

### **TITLE 2. ADMINISTRATION DIVISION 3. STATE PROPERTY OPERATIONS CHAPTER 1. STATE LANDS COMMISSION ARTICLE 4.5. BALLAST WATER MANAGEMENT FOR CONTROL OF NONINDIGENOUS SPECIES.**

The California State Lands Commission (the Commission) proposes to adopt the regulations described below after considering all comments, objections or recommendations regarding the proposed action.

The proposal published through this Notice is a modification of an earlier proposal published December 3, 1999. All of the information contained in that earlier notice is superceded by this Notice.

#### **PROPOSED REGULATORY ACTION**

The Commission proposes to adopt Sections 2270 and 2271 under new Article 4.5 in Title 2, Division 3, Chapter 1 of the California Code of Regulations (C.C.R.). These sections would set a fee to be paid by vessels calling at California ports (the Fee). The Fee is to be used for the Exotic Species Control Fund (the Fund) under Division 36 of the Public Resources Code (P.R.C.) entitled, "Ballast Water Management for Control of Nonindigenous Species," newly established under Chapter 849, Statutes of 1999 (the Act). The proposed regulation would set the Fee at four hundred dollars (\$400.00) per vessel per voyage if the vessel has traveled outside the United States' Exclusive Economic Zone (the EEZ). Provisions are also included whereunder the Commission's Executive Officer would appoint a technical advisory group (TAG) to provide recommendations with regard to the Fee.

#### **PUBLIC HEARING**

The Commission Staff will hold two public hearings. The first will begin at 10:00 a.m. on April 11, 2000, at the Auditorium of the State of California Elihu Harris Building, 1515 Clay Street, Oakland, CA 94612, and the second will begin at 10:00 a.m. on April 13, 2000, at the Board Room, Port of Los Angeles, 425 S. Palos Verdes, San Pedro, CA 90731. Both locations are wheelchair accessible. At the hearings, any person may present statements or arguments orally or in writing, relevant to the proposed regulatory action described in the Informative Digest. The Commission requests, but does not require, that persons who make oral comments at the hearings also submit a written copy of their testimony.

## **WRITTEN COMMENT PERIOD**

Any interested person or his or her authorized representative may submit written comments relevant to the proposed regulatory action to the Commission. The written comment period closes at 5:00 p.m. on April 13, 2000. All written comments must be received at the Commission, by that time. Written comments should be submitted to:

John H. Kloman  
Supervisor, Planning Branch  
California State Lands Commission  
Marine Facilities Division  
330 Golden Shore, Suite 210  
Long Beach, CA 90802-4246

## **AUTHORITY AND REFERENCE**

P.R.C. Section 71207 describes the State program to regulate discharges of ballast water in order to limit the introduction of nonindigenous species. In enforcing the provisions of the Act, the Commission is authorized to adopt the proposed regulations, which would implement, interpret or make specific P.R.C. Section 71215.

## **INFORMATIVE DIGEST**

P.R.C. Section 71215, which became effective January 1, 2000, created the Fund and requires the Commission to establish a reasonable and appropriate Fee to carry out the activities required by the Ballast Water Management Program. It also mandates that the Fee may not exceed one thousand dollars (\$1,000) per vessel voyage. Under P.R.C. Section 71200(j), a voyage is defined as any transit by a vessel destined for any California port from a port or place outside the United State's EEZ, including intermediate stops at a port or place within the EEZ. For the purposes of the Act, a transit by a vessel from a United States port to any other United States port, if at any time the vessel operates outside the EEZ or equivalent zone of Canada, is also a voyage.

Accordingly, the proposed regulation would implement and make specific the Fee requirement under P.R.C. Section 71215(b)(1). Without the Fee, none of the specific multi-agency tasking mandated by the Act can be implemented.

Section 2270 would provide definitions of the terms, "Voyage" and "Exclusive Economic Zone" or "EEZ." These definitions are taken directly from the Act and are included in the section to provide clarity and to prevent any unnecessary cross-reference.

Section 2271(a) would set the exact amount of the fee to be used to support the programs required under the Act at four hundred dollars (\$400) per vessel voyage.

Section 2271(b) would direct the Commission's Executive Officer to invite representatives of persons and entities who must pay the Fee to participate in a TAG to make recommendations regarding the amount of the fee

The draft regulations proposed earlier on December 3, 1999, had also contained a provision allowing the Commission to modify the regulations at any time the Commission determines that reasonably anticipated revenues from the Fee exceed or are insufficient to meet reasonably anticipated expenditures necessary and appropriate to carry out the provisions of the Act. However, upon subsequent considerations and discussions with the Office of Administrative Law, it was determined that any change in the amount of the Fee established under these regulations must be made through an amendment to the regulations. The Commission still intends to modify the Fee in the future if revenues from the Fee are found to be exceeding or to be insufficient to meet program responsibilities under the Act; but any such modifications will be made as amendments to the regulation.

## **DIFFERENCES FROM FEDERAL REGULATIONS**

Recognizing the severity of the problem, the federal government implemented a national ballast water exchange and reporting program in July 1999, but it is voluntary for vessels entering the United States and consists of little more than information gathering at the present time. The Federal monitoring program provides for review of shipboard ballast exchange records and selective ballast water sampling. The Federal program does not contain a mechanism to research alternative methods of ballast water management. The new state program establishes a mandatory, statewide, multi-agency ballast water management and control program. Responsible agencies include the Commission, Department of Fish and Game, State Water Resources Control Board and the Board of Equalization. Each agency is required to work in cooperation with the others in developing reports and conducting research into the extent of current invasions, and potential long-term solutions to the problem of nonindigenous species introductions. All the activities required by the Act would be paid for through the Fund.

## **PLAIN ENGLISH DETERMINATION AND OVERVIEW**

### **Small Business Determination**

The Commission has determined that these regulations do not affect small businesses as defined in Government Code (Gov. C.) Section 11342(h), because all affected businesses are commercial maritime transport owners and

operators, as specified under Gov. C. Section 11342(h)(2)(H), and having annual gross receipts of more than \$1,500,000, as specified under Gov. C. Section 11342(h)(2)(I)(vii).

### **Plain English Policy Overview**

The proposed regulations have been drafted in a plain and straightforward manner and do not contain technical terms that require a plain English policy overview.

### **ESTIMATED COSTS TO THE STATE**

No costs to the State would be incurred in implementing and enforcing these proposed regulations beyond those collected in the Fund. Since the regulations here proposed are limited to setting a fee to pay for programs already mandated by the Act; the regulations will not increase costs to the State. While the various programs mandated under the Act are estimated to cost approximately \$2,100,000 each year until the Act expires under its current terms, all of those programs are mandated by the Act; none can be attributed to the regulatory action here proposed. Under this proposal, the Fee would be set at a level that is expected to provide revenues equal to costs required to implement the Act. No costs will be incurred by the State in implementing any or all programs mandated by the Act beyond the amounts generated through collection of the Fee.

### **DISCLOSURES REGARDING THE PROPOSED ACTION**

Mandate on local agencies and school districts: None.

Costs or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Part 7 (commencing with section 17500) of Division 4 of the Government Code. None.

Other non-discretionary cost or savings imposed upon local agencies: None.

Costs or savings in federal funding to the state: None.

Cost impact on private persons or directly affected businesses: All vessel owners or operators affected by the proposed regulations will be required to pay a fee of four hundred dollars (\$400) per vessel voyage.

Creation or elimination of jobs within the State of California: The Commission has determined that the proposed regulations will not have a significant impact on the creation or elimination of jobs within the State of California.

Creation of new businesses or the elimination of existing businesses within the State of California: The Commission has determined that the proposed regulations will not have a significant impact on the creation or elimination of businesses within the State of California.

Expansion of businesses currently doing business within the State of California: The Commission has determined that the proposed regulations would not have a significant impact upon expansion of businesses currently doing business within the State of California.

The Commission has determined that the action will not have a significant adverse economic impact on business, including the ability of California businesses to compete with businesses in other states.

Significant effect on housing costs: None.

## **CONSIDERATION OF ALTERNATIVES**

In accordance with Gov. C. ' 11346.5, sub. (a)(12), the Commission must determine that no alternative considered by it would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Commission invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the above-mentioned hearings or during the written comment period.

## **CONTACT PERSON**

Inquiries concerning the substance of the proposed action may be directed to:

Maurya Falkner  
Environmental Specialist IV  
State Lands Commission  
Marine Facilities Division  
330 Golden Shore, Suite 210  
Long Beach, CA 90802-4246  
Telephone: (562) 499-6312

Or to: Mark A. Meier  
Senior Staff Counsel  
State Lands Commission  
100 Howe Avenue, Suite 100 South  
Sacramento, CA 95825-8202  
Telephone: (916) 574-1853

Requests for copies of the proposed text of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based should be directed to:

John H. Kloman  
Supervisor, Planning Branch  
California State Lands Commission  
Marine Facilities Division  
330 Golden Shore, Suite 210  
Long Beach, CA 90802-4246

#### **AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS**

The Commission will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its offices at either of the above addresses. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations and the initial statement of reasons. Copies may be obtained by contacting John H. Kloman at the address or telephone number listed above.

#### **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

Following the hearing, the Commission may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text, with changes clearly indicated, shall be made available to the public for at least 15 days prior to the date on which the Commission adopts the regulations. Requests for copies of any modified regulations should be sent to the attention of John H. Kloman at the address indicated above. The Commission will accept written comments on the modified regulations for 15 days after the date on which they are made available.